

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 04.12.2006

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

WRIT PETITION NOS.19002, 19003 and 20252 of 2006 and
M.P.Nos.1 of 2006

Manu Goel
Director
M/s Vriksh Transworld
Holdings Ltd. ... Petitioner in W.P.19002/06
Manu Goel
Proprietor
M/s Sri Lakshmi Steel
Industries ... Petitioner in W.P.19003/06
M/s Ideal Commodities
Corporation rep. by
Sri.J.B.Agarwal ... Petitioner in W.P.20252/06

-Vs-

1. The Customs Excise and Service Tax
Appellate Tribunal,
South Regional Bench,
Shastri Bhavan Annexe,
Haddows Road, Chennai 6.
2. The Commissioner of Customs
(Sea Exports), Customs House,
No.60, Rajaji Salai,
Chennai 600 001. ... Respondents in all WPs

Writ Petitions filed under Article 226 of the Constitution
of India praying for the issue of a Writ of certiorarified
mandamus as stated therein.

For Petitioners	:	Mr.K.Jayachandran
For Respondent	:	Mr.P.Wilson for Asst. Solicitor General for R1 in (W.P.Nos.19002 & 19003/06) Mr.K.Ramakrishna Reddy SCGSC for respondents in W.P.20252/06

Mr. T. Chandrasekaran,
SCGSC for R2 in WP.19002 & 19003/06

O R D E R

The prayer in the writ petition No.19002 of 2006 is for the issuance of a writ of certiorarified mandamus to call for the records relating to the order passed by the 1st respondent in Stay Order No.510 of 2006(C/PD/332/2005 in C/473/2005) dated 25.04.2006 and to quash the same as arbitrary, unsustainable and further direct the 1st respondent to dispose of the appeal of the petitioner, C/473/2005, on merits without insisting any pre-deposit of penalty amount.

2. The prayer in the writ petition No.19003 of 2006 is for the issuance of a writ of certiorarified mandamus to call for the records relating to the order passed by the 1st respondent in Stay Order No.511 of 2006(C/PD/335/2005 in C/476/2005) dated 25.04.2006 and to quash the same as arbitrary, unsustainable and further direct the 1st respondent to dispose of the appeal of the petitioner, C/476/2005, on merits without insisting any pre-deposit of penalty amount.

3. The prayer in the writ petition No.20252 of 2006 is for the issuance of a writ of certiorarified mandamus to call for the records relating to the order passed by the 1st respondent in Stay Order No.502 of 2006(C/PD/322/2005 in C/464/2005) dated 25.04.2006 and to quash the same as arbitrary, unsustainable and further direct the 1st respondent to dispose of the appeal of the petitioner, C/464/2005, on merits without insisting any pre-deposit of penalty amount.

4. The petitioners put in issue the orders of the Customs Excise and Service Tax Appellate Tribunal, wherein in order to maintain the appeals, which the petitioners preferred, the Tribunal directed the petitioners to deposit 25% of the respective penalty amounts. Mr.K.Jayachandran, the learned counsel appearing for the petitioners submits that the petitioners are only the importers. They sold the goods imported on High Sea Sales basis and the consignee who cleared the goods has also produced the end use certificates so as to avail the benefit of the notification No.17/2001-Cus.as. If the notification is applicable, only 5% duty is payable by the petitioners and in the absence of notification 30% duty is payable. It is the case of the respondents that the goods has been diverted. The correctness of the said finding has been seriously contested in the appeals filed by the petitioners on the basis of the end due certificates issued by the authorities

concerned. When such being the position, the imposition of 25%, that too a penalty cannot be legally sustained having regard to the prima-facie cases and also the financial position of the petitioners. He further submitted that at the time of admission of the writ petitions, this Court has passed an order directing the petitioners to deposit Rs.1 lakh in each of the case within a period of three weeks from the date of the order. That order has been complied with. Hence the interim order can be treated as final order in the writ petitions and the Tribunal shall be directed to take up the appeals on file and proceed further.

5. The learned Assistant Solicitor General and Mr.K.Ramakrishnareddy, learned counsel appearing for the respondents has submitted that the Tribunal having found that there are no prima-facie cases, has passed orders that too taking a very very lenient view by directing the petitioners to pay 25% of the penalty alone and therefore, that order need no be interfered with.

6. I have heard the learned counsel on either side and perused the materials on record.

7. What is put in issue is the levy of penalty in these cases on the ground that the goods imported were diverted and it is contended that petitioners would able to prove their cases on the basis of the end use certificates issued by the competent authorities. When that being the position and in the peculiar facts of the case, what is disputed is only the penalty and not the customs duty, I am of the view, that the payment made by the petitioners pursuant to the interim order, could be made as final order in the writ petitions by modifying the order of the Tribunal directing payment of 25% of the respective penalty amounts to Rs.1,00,000/- in respect of each of the petitioners to entertain the appeals. Hence the order of the Tribunal is modified to the above said effect and the Tribunal is directed to proceed further with the appeals.

8. With the above observations, the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

rg

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Customs Excise and Service Tax
Appellate Tribunal,
South Regional Bench,
Shastri Bhavan Annexe,
Haddows Road, Chennai 6.

2. The Commissioner of Customs
(Sea Exports), Customs House,
No.60, Rajaji Salai,
Chennai 600 001.

+ 2 ccs to Mr. K. Jayechandran, Advocate SR no. 59658

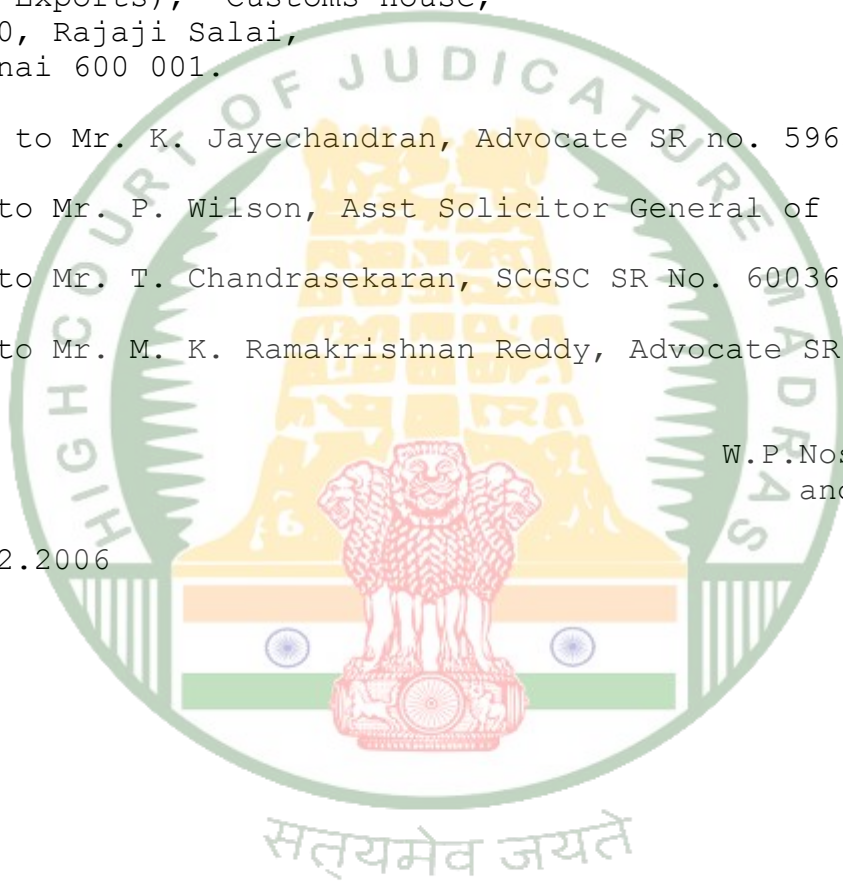
+ 1 cc to Mr. P. Wilson, Asst Solicitor General of India SR 59749

+ 1 cc to Mr. T. Chandrasekaran, SCGSC SR No. 60036

+ 1 cc to Mr. M. K. Ramakrishnan Reddy, Advocate SR No. 59522

W.P.Nos.19002, 19003
and 20252 of 2006

KG (CO)
SR/11.12.2006



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